

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VERTAMEDIA LLC,  
Plaintiff,

v.

BITESIZE NETWORKS, INC. f/k/a/  
MEVIO, INC.,  
Defendant.

Case No. 14-cv-02980-KAW

**ORDER REQUIRING SUPPLEMENTAL  
BRIEFING; CONTINUING MOTION  
HEARING**

Re: Dkt. No. 15

Plaintiff Vertamedia LLC has moved for default judgment against Bitesize Networks, Inc. Upon initial review of the complaint and the moving papers, there are a number of issues Plaintiff has not sufficiently addressed. Accordingly, Plaintiff shall address the following issues in a supplemental brief on not more than 25 pages:

- (1) Plaintiff moves for default judgment against Bitesize Networks, though the conduct of another company, Mevio, Inc. is the subject of the complaint. Plaintiff has neither alleged nor briefed why it is appropriate to enter default judgment against Bitesize Networks in this case.
- (2) Plaintiff, a Nevada limited liability company, has not identified the citizenship of any of its members. Without allegations in the complaint that address this, the Court is unable to determine whether it has subject matter jurisdiction over this action. *See Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("An LLC is a citizen of every state of which its owners/members are citizens."). Plaintiff shall therefore brief why the allegations in the complaint are sufficient to satisfy the Court that subject matter jurisdiction exists in this case.
- (3) Plaintiff served a copy of the summons and complaint on a production manager of

Bitesize Networks, not Mevio, Inc., and did so by substituted service. Plaintiff shall brief whether substituted service on a production manager of Bitesize Networks is proper in this case.

(4) The billing records submitted in connection with the motion indicate that there may have been communications between Plaintiff's counsel and Defendant's counsel. *See, e.g., Goldstein-Gureff Decl., Dkt. No. 15-4* ("drafted the response letter to the opposing counsel . . . drafted the instructional letter to the opposing counsel . . . communications with opposing counsel re service of process . . . communications with opposing party.") Plaintiff shall brief whether these communications constitute an appearance by Defendant, which entitles it to notice of the motion for default judgment. Fed. R. Civ. P. 55(b)(2); *see Civic Ctr. Square v. Ford (In re Roxford Foods)*, 12 F.3d 875, 879 (9th Cir. 1993) ("[N]otice is only required where the party has made an appearance. The appearance need not necessarily be a formal one. . . . In limited situations, informal contacts between the parties have sufficed when the party in default has thereby demonstrated a clear purpose to defend the suit.") (internal quotations and citations omitted).

(5) Plaintiff requests attorneys' fees in its motion for default judgment but it has not specified the legal basis that authorizes such an award in this case.

(6) Plaintiff shall address the factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), which this Court must consider in order to determine whether default judgment may be entered in this case.

Plaintiff shall file its supplemental brief within 21 days of this order. The motion hearing currently set for April 2, 2015 is continued to May 21, 2015.

IT IS SO ORDERED.

Dated: 03/31/15

  
KANDIS A. WESTMORE  
United States Magistrate Judge